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Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO W-01(f)-31–11 OF 2012 (W)
ARIFIN ZAKARIA CHIEF JUSTICE, SURIYADI, ZALEHA ZAHARI, JEFFREY TAN AND RAMLY ALI FCJJ
3 NOVEMBER 2013

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Constitutional Law — Legislature — Remuneration for members of Parliment — Member of Parliament uttered disparaging and bias remarks in Dewan Rakyat against another member — Member removed from Dewan Rakyat — Motion passed to suspend member of Parliament along with allowance and benefits enjoyed for 12 months — Whether proceedings in passing motion to suspend valid — Whether proceedings justiciable — Whether member entitled to allowances and benefits by virtue of art 64 of the Federal Constitution while under suspension — Houses of Parliament (Privileges and Powers) Act 1952 s 9

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During a debate in the Dewan Rakyat ('Dewan'), the respondent, a member of the Parliament for Puchong uttered certain statements alleging that the Deputy Prime Minister, the member of the Parliament for Pekan, was implicated in a murder. The respondent also made disparaging remarks, and alleged bias against the Deputy Speaker of the Dewan in ordering him to leave the Dewan. The respondent was removed from the Dewan. The second appellant tabled a motion in the Dewan pursuant to Standing Order 27 (3) of the Standing Orders of the Dewan Rakyat, to commit the respondent for contempt committed in the Dewan. The motion was debated by the Dewan and the respondent was found guilty of contempt. The Dewan then passed by a resolution (impugned resolution) that the respondent be suspended as a member of the Parliament for a period of 12 months and that he not be paid the prescribed allowances and benefits of a member of the Parliament during the suspension period. This resolution was then administratively confirmed by a letter of the *Setiausaha* Dewan Rakyat ('the third appellant'). The respondent then applied to the High Court for a declaratory order that the resolution be declared null and void and that he was entitled to be paid the remuneration under art 64 of the Federal Constitution ('the Constitution'). The High Court ruled that the resolution suspending the respondent from Parliament for a period of 12 months was non-justiciable and this prayer was dismissed. The court however allowed the prayer relating to the application in relation to the withholding of remuneration during the suspension period. The High Court ruled that in the absence of an express enabling power to do so, the decision to deprive the respondent of the allowances and benefits prescribed by the Members of Parliament (Remuneration) Act 1980 ('Act 237') was declared to be null and void. The appellants appealed to the Court of Appeal against the

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decision of the High Court regarding the issue of payment of remuneration of the respondent during the suspension period which held that the non-payment to the respondent of his remuneration during the period of his suspension from the Parliament had no legal basis. It was held that his right to remuneration during his suspension was a justiciable issue. The issues that arose in the present appeal were whether art 62(1) of the Constitution read with Standing Order 44 (8) Standing Orders of the Dewan Rakyat empowers the Parliament to take any disciplinary action against any of its members via motion premised on the breaches of the rights and privileges as a member of the Parliament and/or under contempt of the House and punishable with suspension without remuneration; whether the Parliament had any inherentpowers and jurisdiction to discipline its members on any charges of breaches of the rights and privileges as a member of the Parliament and/or contempt of the House within the walls of the Parliament; whether the powers of the Parliament to impose punishment to discipline its members within its walls was absolute and exclusive; and whether the passing of a motion in the Parliament constituted a proceeding in the Parliament and protected by art 63(1) of the Constitution.

Held, dismissing the appeal:

(1) Section 9 of the Houses of Parliament (Privileges and Powers) Act 1952 ('HPPPA'), is the only provision which provides for the acts of contempt of the House inclusive of the summary power to punish offenders. The courts do not have the jurisdiction to enquire into matters which arose out of and are internal proceedings and procedures of the Parliament. Whether any act or omission, which obstructs or impedes either House of Parliament in the performance of its function, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt of the House which is essentially a matter for the Parliament itself to decide. What tantamounts to contempt will depend very much on the facts (see para 23).

(2) It was no longer an issue that the House has legal basis to find the respondent guilty of contempt and to impose the punishment of suspension pursuant to ss 9, 32 and 33 of the HPPPA (see para 25).

(3) It is the Constitution that decides whether the Parliament is empowered to take any disciplinary action against any of its members in the form of suspension without remuneration. Constitutionally, the remuneration of a Member of the Parliament is guaranteed under art 64 of the Constitution. The language used under it is imperative, and understandably so because in providing remuneration for its members of the Parliament, the Parliament intended to provide them with a decent subsistence to enable them to carry out the duties free from any temptation of abusing the political powers and influence in order to

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acquire wealth. An undertaking whereby a member is deprived of the remuneration is clearly against public policy as it would be hard for him to function effectively as a member of the Parliament without financial worries (see para 36); *Datuk Ong Kee Hui v Sinyium Anak Mutit* [1983] 1 MLJ 36 referred.

(4) The House was not armed with powers pursuant to any Act or legal premise to withhold the remuneration against the respondent-none existed at the date of the commencement of the HPPPA. The general provision of Standing Order 44 (8), which relates to non-deprivation of the House's power to act, was of no assistance to the appellants either (see para 37).

(5) It was inconceivable that the Parliament, after passing a motion, was permitted to allude to Standing Orders when faced with the want of statutory authority, to suspend the remuneration of the respondent, a course of action that unwittingly renders a constitutional provision meaningless. In the circumstances of the case, it was therefore manifestly patent that the motion to disentitle the respondent of his allowance and benefits was devoid of legal foundation. A constitutional protection granted to Members of Parliament by the imperative provision of art 64 of the Constitution, which takes in the form of the HPPPA, could not simply be displaced in the absence of clear law (see para 40).

[Bahasa Malaysia summary

Dalam perbahasan di Dewan Rakyat ('Dewan'), responden, ahli Parlimen Puchong telah mengeluarkan kenyataan tertentu yang mengatakan bahawa Timbalan Perdana Menteri, ahli Parlimen Pekan, telah terlibat dalam satu pembunuhan. Responden juga telah membuat kenyataan menghina, dan mendakwa terdapat berat sebelah terhadap Timbalan Speaker Dewan kerana mengarahkan responden untuk meninggalkan Dewan. Responden telah dikeluarkan dari Dewan. Perayu kedua telah membentangkan usul di Dewan menurut Peraturan Mesyuarat 27(3) Perintah Mesyuarat Dewan Rakyat, untuk mengenakan responden kerana penghinaan yang dilakukan dalam Dewan. Usul itu telah dibahaskan oleh Dewan dan responden telah didapati bersalah kerana penghinaan. Dewan kemudian meluluskan resolusi (resolusi yang dipersoalkan) agar responden digantung sebagai ahli Parlimen untuk tempoh 12 bulan dan agar dia tidak dibayar elaun dan faedah yang ditetapkan kepada ahli Parlimen sepanjang tempoh penggantungan itu. Resolusi ini kemudian telah disahkan secara pentadbiran melalui surat Setiausaha Dewan Rakyat ('perayu ketiga'). Responden kemudian telah memohon kepada Mahkamah Tinggi kerana perintah deklarasi bahawa resolusi itu diisytiharkan terbatal dan tidak sah dan bahawa dia berhak dibayar saraan di bawah perkara 64 Perlembagaan Persekutuan ('Perlembagaan'). Mahkamah Tinggi telah memutuskan bahawa resolusi yang menggantung responden dari Parlimen untuk tempoh 12 bulan adalah tidak wajar dan rayuan ini telah ditolak.

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Mahkamah bagaimanapun telah membenarkan rayuan berkenaan permohonan berkaitan penahanan saraan sepanjang tempoh penggantungan itu. Mahkamah Tinggi memutuskan bahawa ketiadaan kuasa nyata yang membolehkan berbuat demikian, keputusan untuk menafikan responden daripada elaun dan faedah yang ditetapkan oleh Akta Ahli Parlimen (Saraan) 1980 ('Akta 237') adalah diisytiharkan terbatal dan tidak sah. Perayu-perayu telah merayu kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi berhubung isu bayaran saraan responden sepanjang tempoh penggantungan yang memutuskan bahawa bayaran yang tidak dibuat kepada responden tentang saraannya sepanjang tempoh penggantungannya dari Parlimen tidak mempunyai asas undang-undang. Adalah diputuskan bahawa haknya mendapat saraan sepanjang penggantungannya adalah isu yang boleh diadili. Isu-isu yang timbul dalam rayuan ini adalah sama ada perkara 62(1) Perlembagaan dibaca dengan Peraturan Mesyuarat 44(8) Peraturan-Peraturan Mesyuarat Dewan Rakyat memberi kuasa kepada Parlimen untuk mengambil apa-apa tindakan tatatertib terhadap mana-mana ahlinya melalui usul yang berasaskan pelanggaran hak dan keistimewaan sebagai ahli Parlimen dan/atau di bawah penghinaan Dewan dan boleh dihukum dengan penggantungan tanpa saran; sama ada Parlimen mempunyai apa-apa kuasa dan bidang kuasa sedia ada untuk mendisiplinkan ahli-ahlinya berhubung apa-apa pertuduhan pelanggaran hak dan keistimewaan sebagai ahli Parlimen dan/atau menghina Dewan dalam Parlimen; sama ada kuasa-kuasa Parlimen untuk mengenakan hukuman untuk mendisiplinkan ahli-ahli dalam kuasanya adalah mutlak dan eksklusif; dan sama ada kelulusan usul dalam Parlimen membentuk prosiding dalam Parlimen dan dilindungi oleh perkara 63(1) Perlembagaan.

Diputuskan, menolak rayuan:

(1) Seksyen 9 Akta Dewan-Dewan Parlimen (Keistimewaan dan Kuasa) 1952 ('ADPKK'), adalah satu-satunya peruntukan yang memperuntukkan tindakan penghinaan Dewan termasuk kuasa terus untuk menghukum pesalah. Mahkamah tidak mempunyai bidang kuasa untuk menyiasat perkara-perkara yang timbul daripada dan adalah prosiding dan prosedur dalaman Parlimen. Sama ada tindakan atau peninggalan, yang menghalang atau menjejaskan mana-mana Dewan Parlimen dalam prestasi berhubung fungsinya, atau menghalang atau menjejaskan mana-mana ahli atau pegawai Dewan tersebut dalam melaksanakan kewajipannya, atau yang mempunyai kecenderungan, secara langsung atau tidak langsung, untuk memberikan keputusan sedemikian, boleh dianggap sebagai penghinaan kepada Dewan yang pada dasarnya adalah suatu perkara untuk diputuskan oleh Parlimen. Apa yang dianggap penghinaan akan bergantung kepada fakta (lihat perenggan 23).

(2) Ia bukan lagi suatu isu di mana Dewan mempunyai asas perundangan untuk mendapati responden bersalah kerana menghina dan untuk

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mengenakan hukuman penggantungan menurut ss 9, 32 dan 33 ADPKK (lihat perenggan 25).

(3) Perlembagaan perlu memutuskan sama ada Parlimen diberi kuasa untuk mengambil apa-apa tindakan tatatertib terhadap mana-mana ahlinya dalam bentuk penggantungan tanpa saraan. Secara perlembagaan, saraan ahli Parlimen adalah dijamin di bawah perkara 64 Perlembagaan. Bahasa yang digunakan di bawahnya adalah imperatif, dan boleh difahami dalam memperuntukkan saraan untuk ahli-ahli Parlimen, Parlimen berniat untuk memberi mereka sara hidup yang baik bagi membolehkan mereka menjalankan kewajipan mereka bebas daripada keinginan menyalahgunakan kuasa politik dan pengaruh bagi tujuan meraih kekayaan. Akujanji di mana seorang ahli yang dinafikan saraan adalah jelas melanggar polisi awam kerana adalah sukar baginya berfungsi dengan berkesan sebagai ahli Parlimen tanpa masalah kewangan (lihat perenggan 36); *Datuk Ong Kee Hui v Sinyium Anak Mutit* [1983] 1 MLJ 36 dirujuk.

(4) Dewan tidak mempunyai kuasa menurut mana-mana Akta atau premis perundangan untuk menghalang saraan daripada responden yang tidak wujud pada tarikh mula ADPKK. Peruntukan am Peraturan Mesyuarat 44(8), yang berkenaan Dewan tidak kehilangan kuasa untuk bertindak, tidak membantu perayu-perayu juga (lihat perenggan 37).

(5) Adalah mustahil untuk Parlimen, selepas meluluskan usul, dibenarkan untuk melanggar Peraturan Mesyuarat apabila berhadapan dengan keperluan kuasa statutori, untuk menggantung saraan responden, suatu kausa tindakan yang sengaja menyebabkan peruntukan perlembagaan tidak bermakna. Dalam keadaan kes ini, adalah jelas bahawa usul untuk melucutkan responden daripada elaun dan faedahnya tidak berasas. Perlindungan perlembagaan yang diberikan kepada ahli Parlimen melalui peruntukan imperatif perkara 64 Perlembagaan, dalam bentuk ADPKK, tidak boleh diabaikan jika tiada undang-undang yang jelas (lihat perenggan 40).]

Notes

For cases on remuneration for members of Parliament, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2765–2766.

Cases referred to

Ah Thian v Government of Malaysia [1976] 2 MLJ 112, FC (refd)
Bradlaugh v Gossett (1884) 12 QBD 271, DC (refd)
Buttes Gas & Oil Co v Hammer [1982] AC 888, HL (refd)
Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29; [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98, FC (refd)
Datuk Ong Kee Hui v Sinyium Anak Mutit [1983] 1 MLJ 36, FC (refd)

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Kuwait Airways Corp v Iraqi Airways Co (No 3) [2002] UKHL 19, HL (refd)
Lim Kit Siang v Dato' Seri Dr Mahathir Mohamad [1987] 1 MLJ 383, SC (refd)
Minister of Home Affairs v Fisher [1979] 3 All ER 21, PC (refd)
Public Prosecutor v Kok Wah Kuan [2008] 1 MLJ 1, FC (refd)
R v Chaytor [2010] 3 WLR 1707, SC (refd)
Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors [2014] 4 MLJ 12, FC (refd)
YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24, FC (not folld)

Legislation referred to

Federal Constitution arts 4(1), 62(1), 63, 63(1), 64, 72, 72(1)
Houses of Parliament (Privileges and Powers) Act 1952 ss 2, 9, 32, 32(1), 32(1)(i), 33
Laws of the Constitution of Perak
Members of Parliment (Remuneration) Act 1980

Appeal from: Civil Appeal No W–-01—54 of 2010 (Court of Appeal, Putrajaya)

Amarjeet Singh a/l Serjit Singh (Shamsul Bolhassan) (Senior Federal Counsel, Attorney General's Chambers) for the appellants.
Karpal Singh a/l Ram Singh (Sangeet Kaur Deo a/p Karpal Singh with him)(Karpal Singh & Co) for the respondent.

Suriyadi FCJ (delivering judgment of the court):

[1] On 12 March 2009, during a debate in the Dewan Rakyat ('Dewan'), the respondent who is the Member of Parliament for Puchong uttered certain statements alleging that the Deputy Prime Minister, who was and still is the Member of Parliament for Pekan, was implicated in a murder. The respondent also made disparaging remarks, and alleged bias against the Deputy Speaker of the Dewan in ordering him to leave the Dewan. The outcome of that was the prompt removal of the respondent from the Dewan.

[2] On 16 March 2009, Datuk Seri Mohamad Nazri Abdul Aziz, the Minister in the Prime Minister's Department (second appellant) tabled a motion in the Dewan pursuant to Standing Order 27 (3) of the Standing Orders of the Dewan Rakyat, to commit the respondent for contempt committed within the walls of the Dewan, in that by making the accusatory and disparaging remarks which the respondent did against the Deputy Prime

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Minister and the Deputy Speaker respectively, the respondent had breached the rights and privileges of a member of the Dewan. The motion was debated by the Dewan and the respondent was found guilty of contempt. The Dewan then passed by a resolution (impugned resolution) that the respondent be suspended as a Member of Parliament for a period of twelve (12) months and that he not be paid the prescribed allowances and benefits of a Member of Parliament during the suspension period. This resolution was then administratively confirmed by a letter of the *Setiausaha* Dewan Rakyat third appellant).

[3] The respondent then applied to the High Court by way of originating summons for a declaratory order that the resolution that he be suspended for a period of twelve (12) months without remuneration be declared null and void and that he was entitled to be paid the remuneration under art 64 of the Federal Constitution. The High Court ruled that the resolution suspending the respondent from Parliament for a period of twelve (12) months was non justiciable and this prayer was dismissed. The court however allowed the prayer relating to the application in relation to the withholding of remuneration during the suspension period. The High Court judge ruled that in the absence of an express enabling power to do so, the decision to deprive the respondent of the allowances and benefits prescribed by the Members of Parliament (Remuneration) Act 1980 (Act 237), passed pursuant to art 64 of the Federal Constitution was declared to be null and void. The High Court ordered that an account be made of all allowances and benefits, which has been withheld, be paid forthwith with interest at 8%pa from the date due until full payment.

[4] The appellants appealed to the Court of Appeal against the decision of the High Court regarding the issue of payment of remuneration of the respondent during the suspension period. The respondent did not appeal on the dismissal of his application for a declaration in respect of his suspension as a Member of Parliament for twelve months. In its judgment, the Court of Appeal held that the non payment to the respondent of his remuneration during the period of his suspension from Parliament had no legal basis. It was held that his right to remuneration during his suspension was a justiciable issue. Chagrined with the Court of Appeal's decision, the appellants appealed, and on 24 October 2012 leave was granted for the determination of the following questions of law:

(a) whether art 62(1) of the Federal Constitution read with Standing Order 44 (8) Standing Orders of the Dewan Rakyat empowers Parliament to take any disciplinary action against any of its members via motion premised on the breaches of the rights and privileges as a Member of Parliament and/or under contempt of the House and punishable with suspension without remuneration;

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(b) whether Parliament has any inherent powers and jurisdiction to discipline its members on any charges of breaches of the rights and privileges as a Member of Parliament and/or contempt of the House within the walls of Parliament:

(i) if the answer to question (2) is in the positive, whether the powers of Parliament to impose punishment to discipline its members within its walls is absolute and exclusive; and

(c) whether the passing of a motion in Parliament constitutes a proceeding in Parliament and protected by art art 63(1) of the Federal Constitution.

SUBMISSION OF PARTIES

The senior federal counsel's submission

[5] The senior federal counsel (SFC) submitted that the Dewan has the jurisdiction and power to pass the impugned resolution and as such the matter is non justiciable by virtue of art 63(1) of the Federal Constitution ('the Constitution') which reads as follows:

> The validity of any proceedings in either House of Parliament or a committee thereof shall not be questioned in any Court.

[6] The SFC submitted that the motion was clearly within the ambit of art 63(1) of the Constitution as it was concerned with the rights and privileges of a member of the Dewan and its power to discipline its members for breaches of such rights and privileges. In this regard, learned SFC referred to the case of *Bradlaugh v Gossett* (1884) 12 QBD 271 at p 275 where it was held that:

> What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject, *Burdett v Abbot* 14 East 1, 148 and *Stockdale v Hansard* 9 Ad & El, are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, 'They would sink into utter contempt and inefficiency without it' 14 East 1 at p 152.

[7] It was submitted that the Dewan is the best judge as to the appropriate punishment to be meted out for misconduct to maintain discipline in the Dewan. Learned SFC submitted that art 62(1) of the Constitution read together with Standing Order 44 (8) and ss 32 and 33 of Houses of Parliament (Privileges and Powers) Act 1952, empower the Dewan to punish its members with suspension without remuneration. Article 62 reads as follows:

> Subject to the provisions of this Constitution and of federal law, each House of Parliament shall regulate its procedure.

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[8] It is pertinent to note that the House enacted the Standing Orders of the Dewan Rakyat to regulate itself, in particular Standing Order 44, for disorderly conduct and contempt of the House. Clauses (1) to (7) of this Order provide for summary power to punish such disorderly conduct. However cl (8) gives the House wider powers to deal with disorderly conduct or contempt of the House in accordance with any resolution of the House. Standing Order 44 (8) reads as follows:

> Nothing in this Order shall be taken to deprive the House of the power to take action against any person, including a non-member, in accordance with any resolution of the House.

[9] Continuing his submission, learned SFC further submitted that in Malaysia, the federal law that regulates the powers and privileges of the House is the Houses of Parliament (Privileges and Powers) Act 1952. It was submitted that the Act has enlarged the House's powers and privileges vide s 32(1), which has two separate limbs, and may be summarised as follows:

(a) the House holds, enjoys and exercises the powers relating to the privileges as are held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom; and

(b) the House holds such privileges and powers as are from time to time defined by any law of Malaysia but not exceeding those at the commencement of such law held, enjoyed and exercised in the Commons House aforesaid.

[10] With the promulgation of the above provisions, in particular as summarised in (a), the practices of the House of Commons took centre stage in this appeal (especially for matters which have not been included in the Houses of Parliament (Privileges and Powers) Act 1952). In the event, the laws of the House of Commons oversee matters of this nature. The second limb is inapplicable as there is no written law providing express power to punish for such contempt.

[11] On the right of the House to withhold the remuneration which the respondent was entitled to and on the issue of incorporation of the House of Commons privileges, immunities and powers pursuant to s 32(1)(i) of the Houses of Parliament (Privileges and Powers) Act 1952, the appellants drew support from Erskine May's Treatise on the *Law, Privileges, Proceedings and Usage of Parliament*, (23rd Ed) (2004). Page 164 states:

> Since the passing of Standing Order No 45A in 1998, withholding of the Member's salary is an automatic consequence of suspension while footnote 7 states as follows: Previously, some Orders for suspension also provided for the Member's salary to be withheld, eg Commons Journal (1997-98) at 191.

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[12] It was submitted that the amendment in 1998 to the Standing Orders of the House of Commons in England, by inserting an express provision for withholding of a Member's remuneration, was merely to codify the existing practice of the House of Commons. In short it was submitted that in England the matter was non-justiciable and essentially a matter for Parliament itself to decide.

[13] The SFC further submitted that in Malaysia the House is given express power to impose punishment for disorderly conduct or contempt of the House under Standing Order 44 (8) read with the first limb of s 32(1) of the Act.

THE RESPONDENT'S POSITION

[14] In reply, learned counsel for the respondent submitted that any disciplinary action in the form of a resolution or otherwise to withhold remuneration, allowances and other entitlements against a Member of Parliament under art 62(1) must be subject to art 64 of the Constitution, read with the Members of Parliament (Remuneration) Act 1980. Article 64 reads as follows:

> Parliament shall by law provide for the remuneration of members of each House.

[15] It was submitted that this is an enabling provision which empowers Parliament with the power to enact written law that provides remuneration for Members of Parliament. Here, Parliament had exercised the power conferred upon it by enacting the Members of Parliament (Remuneration) Act 1980 (Act 237).

[16] The respondent submitted that the motion to withhold remuneration and other benefits did not have any constitutional or legal support. The respondent submitted that the submission of the appellants was misconceived and fatally flawed.

THE ISSUES CONSIDERED BY US

[17] With a heavy duty placed on their shoulders, and in order for them to perform their duties without harassment or undue influence, Members of Parliament have been accorded special status, powers, privileges and immunities. This has enhanced the prestige of Parliament and its members (*Constitutional Law in Malaysia & Singapore* (3rd Ed) by Kevin YL Tan & Thio Li-ann). These privileges are ensconced in art 63 of the Constitution and the Houses of Parliament (Privileges and Powers) Act 1952. Despite the privileges, immunities and powers accorded to the Members of Parliaments, unlike the British approach where Parliament is supreme, in Malaysia the issue of the

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justiciability of a privilege ensures the constant presence of the court's shadow being cast over Parliament's proceedings. The court's presence ensures that a check and balance exists. It is not in dispute that the main thrust of the appeal revolves around art 63(1) of the Constitution together with the justiciability of the impugned resolution relating to the respondent's disentitlement to the allowances and benefits of a Member of Parliament.

i. *Justiciability*

[18] Justiciability concerns the limit upon legal issues over which a court can exercise its judicial authority. If the court has no authority to adjudicate over the dispute, then it is non-justiciable. This issue is recognised by courts and currently inherent in the nature of the judicial process (*Buttes Gas & Oil Co v Hammer* [1982] AC 888; *Kuwait Airways Corporation v Iraqi Airways Co* [2002] UKHL 19). Before resolving the question of justiciability of the orders sought by the appellants, perhaps it is necessary that we first undertake a legal discussion on the privileges and limits of the House.

GENERAL OVERVIEW OF THE LAW

[19] Blackstone in *Commentaries on the Laws of England* (17th Ed) (1830), Vol 1, p 163 authored that 'the whole of the law and custom of Parliament has its origin from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere'. By this policy Parliament is defended from external interferences be it from the Government or the courts (but see *R v Chaytor* [2010] 3 WLR 1707). In short, Parliament itself is the very body that should take care of proceedings within its perimeters, proceedings that are part of the Parliamentary process by which the House reached it decision, eg a Bill. In considering a fuller meaning of the expression 'Proceedings in Parliament' *Parliamentary Practice* (20th Ed) by Erskine May supplies the following at p 92:

> The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principle part of which is debate, by which it reaches a decision.
>
> An individual Member takes part in a proceeding usually by speech, but also by various recognised kinds of formal action, such as voting, giving notice of a motion, etc, or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of a House, e.g. by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.

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A While taking part in the proceedings of a House, members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

B **[20]** Though not an easy task, it is quite useful to delineate a matter in the course of Parliamentary proceedings and a matter falling outside it. We take the case of *R v Chaytor*, as an example, to drive this point. The defendants in this case, while serving as Members of Parliament, had made false claims for expenses and allowances, resulting in them being charged with false accounting C at the Crown Court. They claimed Parliamentary privilege pursuant to 'proceedings in Parliament' but were unsuccessful. Both the Crown court judge and the Court of Appeal rejected their defences and they were ordered to stand trial. The Court of Appeal opined that the alleged dishonest claims did not D constitute proceedings in Parliament, as the nature and connection of the offences to the business of Parliament did not enjoy privilege.

[21] In a nutshell, if a criminal offence has been committed, as in *R v Chaytor*, and construed as proceedings outside its business and privilege of E Parliament, the courts can intervene and look into the matter. Once a disputed matter falls within Parliamentary privilege a court will decline jurisdiction and the disputed matter will be declared as non-justiciable.

[22] The issue of the justiciability of a matter is not restricted to criminal F cases, but extends also to acts that displace the Constitution. More of this discussion later. In the final analysis, a court is confined to the role of determining whether a privilege exists together with its scope, and thereafter to conclude whether the matter justifies judicial intervention.

G THE ACT BEFORE US AND THE PUNISHMENTS IMPOSED

[23] Section 9 of the Houses of Parliament (Privileges and Powers) Act 1952, is the only provision which provides for the acts of contempt of the House H inclusive of the summary power to punish offenders. Authorities are quite clear that courts do not have the jurisdiction to enquire into matters which arose out of and are internal proceedings and procedures of Parliament. Therefore whether any act or omission, which obstructs or impedes either House of Parliament in the performance of its function, or which obstructs or impedes I any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt of the House which is essentially a matter for Parliament itself to decide. What tantamounts to contempt will depend very much on the facts. It

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is quite impossible to list every act, which might be considered to amount to contempt, with the power to punish such a misconduct, because of its nature, discretionary.

[24] In *Datuk Ong Kee Hui v Sinyium Anak Mutit* [1983] 1 MLJ 36, the learned judge, when discussing the issue of contempt and ss 32 and 33 of the Houses of Parliament (Privileges and Powers) Act 1952, had occasion to say:

> The only direct express provision on contempt of the House appears in section 9 of the Houses of Parliament (Privileges and Powers) Act 1952, headed 'Power of the House to punish for contempt of the House'. Fourteen specific offences of contempt are listed, to include 'assaulting, obstructing, or insulting any member coming to or going from the House ...' For these offences, the House is provided with a summary power to punish with a fine not exceeding RM1000, or if payment of the fine be not immediately paid, the offender can be committed into custody.
>
> It is clear from the terms of section 9 that it relates to a summary power to punish for contempt. It is silent on the punishment of suspension from the service of the House or the withholding of allowances and other entitlements. Can it therefore be said, as submitted by the respondent, that the relevant motion here is null and void?
>
> The power to suspend, and even to expel, for contempt of the House exists at Common law. Is it the position in Malaysia that there exists only a summary power to fine or to commit into custody if the fine is not paid? I must say this will be an alarming conclusion if it were correct that Parliament in its collective wisdom has, in addition to section 9, provided broader powers through sections 32 and 33 of the 1952 Act.
>
> Through sections 32 and 33, the privileges, immunities and powers of the Houses of Parliament are enlarged by the device of incorporating the like privileges, immunities and powers of the House of Commons as existing on the date of coming into force of any law of Malaysia defining such privileges, immunities and powers. By section 33, such privileges, immunities and powers shall be part of the general and public law of Malaysia.

[25] Under the Members of Parliament (Remuneration) Act 1980 (Act 237), passed pursuant to art 64 of the Constitution, it is provided for that Parliament shall by law provide for the remuneration of members of each House. Moving on from there, the relevant question that must follow is, whether there is any legal basis/power that provides for the withholding of the remuneration by the House in that Act, or anywhere in the Constitution. In the absence of such an express power, can it then be said Parliament has acted unconstitutionally in withholding the respondent's remuneration during the period of his suspension.

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CASE LAWS

[26] The judicial pronouncements of the Federal Court in *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24 apply with equal force to the argument on the issue of non-justiciability premised on art 63(1) of the Constitution, even though that case was in relation to proceedings in a Legislative Assembly under art 72(1) of the Constitution. In that case, the Federal Court held that art 72(1) of the Constitution must be read as being subject to the existence of a power or jurisdiction (be it inherent or express) to do whatever that has been done and that the court had the jurisdiction to ascertain whether the power that has been claimed has been provided for, rendering the issues raised by the applicant in that case justiciable.

[27] In the instant case, the House found the respondent's conduct falls within the category of contempt under s 9 of the Houses of Parliament (Privileges and Powers) Act 1952, and also under Common law. By not filing an appeal against the decision of the High Court dismissing the prayer for a declaratory order against the order of suspension, the respondent had accepted that the decision to suspend him was non-justiciable and was a matter for the Dewan to decide.

[28] Regardless of the want of appeal by the respondent on the 12 months suspension, applying the legal position elucidated in the abovementioned paragraphs to the evidence and circumstances of our case, the correctness of the Dewan moving and approving the motion to suspend the respondent as a Member of Parliament was unimpeachable.

[29] The withholding of a member's remuneration as a punishment to discipline its members within its walls however demands different considerations. It is trite that so long as the punishments have not gone beyond the jurisdiction of Parliament the court cannot interfere ie it is non-justiciable.

[30] In *Dato' Dr Zambry*'s case the Federal Court recognised an overriding power of the courts to determine whether there was a legal basis for the Legislative Assembly to suspend an Assemblyman for an alleged contempt. The alleged contempt on the facts of *Dato' Dr Zambry* related to acts committed beyond the walls of the State Legislative Assembly, for which there is no provision either under the Perak State Constitution, the Standing Orders of the Legislative Assembly or the Enactment of 1959. The Federal Court recently in *Teng Chang Khim (C (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & ors* (Federal Court Civil Appeal No 01–7–03 of 2012(B) unreported) explained and clarified that

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its decision in Dato' Dr Zambry should be limited to the factual context of that case.

ii. Article 63 of the Federal Constitution

[31] In the course of determining the scope of art 63 of the Constitution it must be remembered that in Malaysia the Constitution is supreme and not Parliament. For our courts to adopt the position in England without recognizing the essential distinction in the constitutional systems of the United Kingdom and Malaysia would be erroneous. In *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112, Suffian LP had occasion to state:

> The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

[32] In *Lim Kit Siang v Dato' Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383 Salleh Abas LP at p 386 had said:

> When we speak of government it must be remembered that this comprises three branches, namely, the legislature, the executive and the judiciary. The courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review- a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of judges over legislators but the Constitution over both.
>
> The courts are the final arbiter between the individual and the state and between individuals inter se, and in performing their constitutional role they must of necessity and strictly in accordance with the constitution and the law be the ultimate bulwark against unconstitutional legislation or excess in administrative action.

[33] The doctrine of separation of power is a feature of our Constitution, and that is recognised in *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1 where the Federal Court stated:

> ... we have our own model. Our Constitution does have the features of the separation of powers and at the same time, it contains features which do not strictly comply with the doctrine. To what extent the doctrine applies depends on the provisions of the Constitution. A provision of the Constitution cannot be struck out on the ground that it contravenes the doctrine ...

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[34] It is necessary to add here that a Constitution is a document *sui generis* and a creation of the genius of its people. It calls for its own rules of interpretation to invoke the principles that animate the constitution. The point was made by the Privy Council in *Minister of Home Affairs v Fisher* [1979] 3 All ER 21 and reaffirmed by Raja Azlan Shah CJ (as His Royal Highness then was) in *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29; [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98. On this point, the question of construction of the Federal Constitution assumes importance. We start off with the ambulatory approach in the words of Raja Azlan Shah Ag LP (as he then was) in the case of *Dato' Menteri Othman Baginda & Anor*, which reads:

> ... In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way —'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher*). A Constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms'. The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney-General of St Christopher, Nevis and Anguilla v Reynolds* ... .

[35] In the present case, it was no longer an issue that the House has legal basis to find the respondent guilty of contempt and to impose the punishment of suspension pursuant to ss 9, 32 and 33 of the Houses of Parliament (Privileges and Powers) Act 1952.

Validity of withholding of remuneration during the period of suspension

[36] It must be reiterated that it is the Constitution that decides whether Parliament is empowered to take any disciplinary action against any of its members in the form of suspension without remuneration. Constitutionally the remuneration of a Member of Parliament is guaranteed under art 64 of the Constitution. The language used under it is imperative, and understandably so, because, as stated by the Federal Court in *Datuk Ong Kee Hui v Sinyium Anak Mutit*, 'In providing remuneration for its members of Parliament, Parliament intended to provide them with a decent subsistence to enable them to carry out

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the duties free from any temptation of abusing the political powers and influence in order to acquire wealth'. In the particular context of this Federal Court's decision, it was also said 'an undertaking whereby a member is deprived of the remuneration is clearly against public policy as it would be hard for him to function effectively as a Member of Parliament without financial worries'.

[37] Having scrutinised the relevant provisions, we hold the view that the House was not armed with powers pursuant to any Act or legal premise to withhold the remuneration against the respondent-none existed at the date of the commencement of the Houses of Parliament (Privileges and Powers) Act 1952. The general provision of Standing Order 44 (8), which relates to non-deprivation of the House's power to act, was of no assistance to the appellants either, and it reads as follows:

> (8) Nothing in this Order shall be taken to deprive the House of the power to take action against any person, including a non-member, in accordance with any resolution of the House.

[38] It must be understood that Standing Orders are written rules formulated and formally adopted by the House to regulate its own proceedings, eg how business is arranged or conducted, how the behavior of the Members of Parliament are supposed to behave, and rules to be applied in Committees and the like. Under s 2 of the Houses of Parliament (Privileges and Powers) Act 1952 'standing orders' means the Standing Rules and Orders of the House for the time being in force. It is trite that new Standing Orders may be adopted, suspended, modified and even deleted by way of consensus or by a simple majority vote, on a motion moved by any Member of Parliament (see for analogy *House of Commons Procedure and Practice Edition* by Robert Marleau and Camille, Montpetit). They remain 'standing' or effective until the House states otherwise. Some procedures that have developed through precedents including through rulings made by the Speaker and resolutions of the House may not even be written in the Standing Orders and may only last until the end of a session.

[39] By comparison, a piece of legislation, which at its early stage is called a Bill, will have to go through the hassle of three Readings, before being passed by Parliament. In the process enroute to being passed as law, and in order to overcome all the minefields, the Minister, his Deputy or the Parliamentary Secretary will need all the 'skill, dexterity and astuteness which do not come overnight' (*Reflecting on Cabinet Governing* by Rais Yatim p 469). In short, in comparison to an Act, which has to go through much trial and tribulation before being passed as law, a Standing Order's route is so mild and temporary. Suffice on that reasoning a Standing Order can never be in the same league with a piece of legislation let alone override the Constitution. Robert Marleau and Camille, Montpetit in *House of Commons Procedure and Practice* in clear terms

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said:

> In the hierarchy of Parliamentary procedure, just as statutory provisions cannot set aside constitutional provisions, Standing Orders cannot set aside statutory law. Only Parliament can enact or amend statutory provisions; the House of Commons can adopt its own rules as long as they respect the written constitution and statutory law.

[40] It is therefore inconceivable that Parliament, after passing a motion, is permitted to allude to Standing Orders when faced with the want of statutory authority, to suspend the remuneration of the respondent, a course of action that unwittingly renders a constitutional provision meaningless. In the circumstances of the case it is therefore manifestly patent that the motion to disentitle the respondent of his allowance and benefits was devoid of legal foundation. A constitutional protection granted to Members of Parliament by the imperative provision of art 64 of the Federal Constitution, which takes in the form of the Houses of Parliament (Privileges and Powers) Act 1952, could not simply be displaced in the absence of clear law.

CONCLUSION

[41] We therefore find substance in the submissions of learned counsel for the respondent that there is neither constitutional nor legal basis to empower Parliament to withhold the remuneration of a Member of Parliament. We hold the view that the privileges of Parliament in art 63(1) of the Constitution cannot extend to the withholding of the remuneration through the impugned resolution, with a Standing Order as its vehicle, in the face of art 64 of the Constitution. As art 64, which is part of the supreme law of the Federation (see art 4(1)) demands Parliament to provide for the remuneration of Members of Parliament, it thus must bring itself within the confines and limits placed upon it by the Constitution; it is up to the House to carry out the necessary amendments of the relevant Act if it wishes to be so empowered.

[42] To wind up the appeal, questions 1 and 2 (i) are answered in the negative whilst question 2 is answered in the positive. Question 3 is answered in the positive.

[43] For the above reasons we dismiss the appellants' appeal. Being a matter of public interest, we make no order as to costs.

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Appeal dismissed.

Reported by Afiq Mohamad Noor